

2013 DRAFTING REQUEST**Assembly Substitute Amendment (ASA-AB373)**Received: **10/16/2013**Received By: **pkahler**Wanted: **Soon**

Same as LRB:

For: **Chad Weininger (608) 266-5840**By/Representing: **Kirsten Reader**

May Contact:

Drafter: **pkahler**Subject: **Insurance - miscellaneous**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Weininger@legis.wisconsin.gov**Carbon copy (CC) to: **Tamara.Dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Electronic delivery of notices and other documents

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 10/17/2013	jdyer 10/17/2013	rschluet 10/17/2013	_____			
/P1	pkahler 10/18/2013			_____	sbasford 10/17/2013		
/1		jdyer 10/21/2013	rschluet 10/21/2013	_____	sbasford 10/21/2013	sbasford 10/21/2013	

FE Sent For:

<END>

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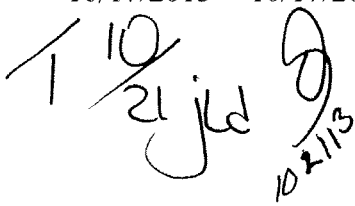
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/P1				_____	sbasford 10/17/2013		

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/?	pkahler	PI 10/17 JW					

FE Sent For:

<END>

Kahler, Pam

From: Reader, Kirsten
Sent: Wednesday, October 16, 2013 10:37 AM
To: Kahler, Pam
Cc: Kovach, Robert
Subject: AB 373, SB 292 - electronic delivery of insurance documents

Hi, Pam:

We'd like to have assembly and senate substitute amendments drafted for AB 373 and SB 292, the electronic delivery of insurance documents and notices.

Basically, it should be drafted to include all insurers (life, property and casualty, and health). Here are the changes that need to be made:

- ✓ Page 3, Line 23, after "receipt" add "and such verification or acknowledgement of receipt can be documented."
- ✓ Page 5, Line 14, after "because" delete the rest of the paragraph and replace with "the contract or policy was delivered by electronic means if the insurer has complied with subs. (3)(a)3". *(if insurer obtained consent)*
- ✓ Page 5, Line 25, at the end of the paragraph add: "This paragraph does not apply to notices or documents required by law to be in writing."
- ✓ Page 6, Line 9, after that line add:
 - (g) If an insurer attempts to deliver a notice or document electronically to the most recent electronic address for the insured in its files and the insurer receives a notice that the electronic delivery has failed, the insurer shall deliver the notices or documents by 1st class mail or other delivery method required by chs. 600 to 655, or rule promulgated thereunder, for the notice or document.
- ✓ Page 7, delete lines 10 and 11 and substitute:
 - (b) An insurer must retain copies of the policy and endorsements to the policy as provided in Chapters 600 thru 655 and regulations thereto, but must make the policy and any endorsements to the policy available upon the request of an insured for at least 3 years. *(after policy terminates)*
- ✓ Page 8, line 2 delete, "in the format preferred by the insureds".
- ✓ Page 8, Line 9, after "applies" delete the remainder of lines 9 and 10 and substitute "to all insurers authorized to write business in this state."

If we could have these substitute amendments rushed and as preliminaries, we would appreciate it.

Thanks, Pam. Please let me know if there are questions,

Kirsten Reader
Research Assistant
Office of Representative Chad Weininger
125 West, State Capitol
608-266-5840 / Kirsten.Reader@legis.wisconsin.gov

*questions answered by conference call with Kirsten
and Andy Franken on 10-17*

Kahler, Pam

From: Kahler, Pam
Sent: Wednesday, October 16, 2013 12:57 PM
To: Reader, Kirsten
Subject: RE: AB 373, SB 292 - electronic delivery of insurance documents

Kristen,

The second change doesn't make sense. Instead of "if the insurer has complied with sub. (3) (a) 3.," should it say "if the conditions under sub. (3) (a) were satisfied"?

From: Reader, Kirsten
Sent: Wednesday, October 16, 2013 10:37 AM
To: Kahler, Pam
Cc: Kovach, Robert
Subject: AB 373, SB 292 - electronic delivery of insurance documents

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- Page 5, Line 14, after "because" delete the rest of the paragraph and replace with "the contract or policy was delivered by electronic means if the insurer has complied with subs. (3)(a)3".
- Page 5, Line 25, at the end of the paragraph add: "This paragraph does not apply to notices or documents required by law to be in writing."
- Page 6, Line 9, after that line add:
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- Page 7, delete lines 10 and 11 and substitute:
 - (b) An insurer must retain copies of the policy and endorsements to the policy as provided in Chapters 600 thru 655 and regulations thereto, but must make the policy and any endorsements to the policy available upon the request of an insured for at least 3 years.
- Page 8, line 2 delete, "in the format preferred by the insureds".
- Page 8, Line 9, after "applies" delete the remainder of lines 9 and 10 and substitute "to all insurers authorized to write business in this state."

If we could have these substitute amendments rushed and as preliminaries, we would appreciate it.

Thanks, Pam. Please let me know if there are questions,

Kirsten Reader
Research Assistant
Office of Representative Chad Weininger
125 West, State Capitol

Kahler, Pam

From: Kahler, Pam
Sent: Wednesday, October 16, 2013 1:59 PM
To: Reader, Kirsten
Subject: RE: AB 373, SB 292 - electronic delivery of insurance documents

I think that sub. (5) in the bill needs a little more clarification for the substitute amendment. Since the defined phrase is "deliver by electronic means," I would prefer to use that phrase – sub. (5) in the bill uses "deliver in electronic form." Any reason not to use the defined phrase?

I would also prefer to use the defined phrase "applicable law" at the end of sub. (5) (a).

If it is correct that the insurer only has to comply with sub. (5) (b) 1. and 2. if a party has consented to receive electronic documents before the effective date of the bill, it should be clarified that sub. (3) (a) doesn't apply.

I'll make these changes in the preliminary version of the sub amendment and you can see if they work.

Pam

From: Reader, Kirsten
Sent: Wednesday, October 16, 2013 10:37 AM
To: Kahler, Pam
Cc: Kovach, Robert
Subject: AB 373, SB 292 - electronic delivery of insurance documents

Hi, Pam:

We'd like to have assembly and senate substitute amendments drafted for AB 373 and SB 292, the electronic delivery of insurance documents and notices.

Basically, it should be drafted to include all insurers (life, property and casualty, and health). Here are the changes that need to be made:

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- Page 5, Line 25, at the end of the paragraph add: "This paragraph does not apply to notices or documents required by law to be in writing."
- Page 6, Line 9, after that line add:
 - (g) If an insurer attempts to deliver a notice or document electronically to the most recent electronic address for the insured in its files and the insurer receives a notice that the electronic delivery has failed, the insurer shall deliver the notices or documents by 1st class mail or other delivery method required by chs. 600 to 655, or rule promulgated thereunder, for the notice or document.
- Page 7, delete lines 10 and 11 and substitute:
 - (b) An insurer must retain copies of the policy and endorsements to the policy as provided in Chapters 600 thru 655 and regulations thereto, but must make the policy and any endorsements to the policy available upon the request of an insured for at least 3 years.
- Page 8, line 2 delete, "in the format preferred by the insureds".

- Page 8, Line 9, after “applies” delete the remainder of lines 9 and 10 and substitute “to all insurers authorized to write business in this state.”

If we could have these substitute amendments rushed and as preliminaries, we would appreciate it.

Thanks, Pam. Please let me know if there are questions,

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125 West, State Capitol
608-266-5840 / Kirsten.Reader@legis.wisconsin.gov

Kahler, Pam

From: Kahler, Pam
Sent: Wednesday, October 16, 2013 2:14 PM
To: Reader, Kirsten
Subject: RE: AB 373, SB 292 - electronic delivery of insurance documents

I guess I have a lot of questions, after all. For the fifth change, do these requirements apply after the termination of the policy? (The policy must be accessible on the insurer's Internet site for as long as the policy is in effect – which may be longer than 3 years.)

From: Reader, Kirsten
Sent: Wednesday, October 16, 2013 10:37 AM
To: Kahler, Pam
Cc: Kovach, Robert
Subject: AB 373, SB 292 - electronic delivery of insurance documents

Hi, Pam:

We'd like to have assembly and senate substitute amendments drafted for AB 373 and SB 292, the electronic delivery of insurance documents and notices.

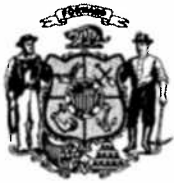
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- Page 7, delete lines 10 and 11 and substitute:
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- Page 8, line 2 delete, "in the format preferred by the insureds".
- Page 8, Line 9, after "applies" delete the remainder of lines 9 and 10 and substitute "to all insurers authorized to write business in this state."

If we could have these substitute amendments rushed and as preliminaries, we would appreciate it.

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0156

PI
JK
JLd
r must run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 373

needed by
Friday, please

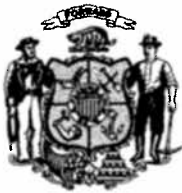
1

AN ACT ^{gen act}; relating to: ???

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

(END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1709/2
PJK:jld:jm

2013 ASSEMBLY BILL 373

September 17, 2013 - Introduced by Representatives WEININGER, NYGREN, CRAIG, A. OTT, SPIROS, T. LARSON, OHNSTAD, CZAJA, STONE, KOYENGA, KNUDSON, TITTL, BORN, BALLWEG, KAHL, KNODL, BIES, JAGLER, KLEEFISCH, STROEBEL, NASS, PETRYK, GOYKE, DANOU, KOLSTE, MURPHY, LEMAHIEU and BEWLEY, cosponsored by Senators LASEE, L. TAYLOR, OLSEN, SHILLING, LASSA and GUDEX. Referred to Committee on Insurance.

1 **AN ACT to create** 610.60 of the statutes; **relating to:** electronic delivery by
2 property and casualty insurers of notices and documents. *by insurers*

Analysis by the Legislative Reference Bureau

This bill authorizes any insurer that provides property or casualty insurance to provide notices and documents to an insurance applicant, an insured, or a policyholder (consumer) by electronic means, and provides that doing so, in compliance with the requirements under the bill, is equivalent to any other method of delivering notices and documents required under applicable law.

substitute amendment
(Such) an insurer may provide notices and documents electronically if the consumer has consented to delivery in that manner and has not withdrawn the consent. The consumer must give consent electronically in a manner that reasonably demonstrates that the consumer will be able to receive the notices and documents electronically. If a consumer gives consent for electronic delivery, the consent applies to any notice or document that the insurer elects to deliver electronically. The consumer may, however, receive a paper copy of a notice or document that has been sent electronically, upon request and for a fee, if any, if the insurer offers this option. Before the consumer gives consent for electronic delivery, the insurer must provide the consumer with a clear and conspicuous statement that contains a number of pieces of information, including that the consent applies to any notices and documents that may be delivered electronically; that the consumer may receive notices and documents in paper form instead; how to request a paper copy, if the insurer offers that option, of a notice or document that has been delivered electronically; and that the consumer may withdraw the consent and the method for doing so.

ASSEMBLY BILL 373

✓ and is not required to be in writing under any statute or rule

✓ The bill contains various related provisions, such as that an oral communication between a consumer and an insurer may qualify as a notice or document delivered electronically if the communication can be reliably stored and reproduced by the insurer; that withdrawal of consent is effective 30 days after the insurer receives the withdrawal; that the withdrawal of consent does not affect the legality, validity, or enforceability of a notice or document delivered electronically before the withdrawal becomes effective; that the legality, validity, or enforceability of a notice or document delivered electronically may not be denied solely because ~~the consent was not given electronically~~; and that notices and documents delivered electronically must meet the requirements of the provisions of the statutes that codify the Uniform Electronic Transactions Act.

substitute amendment

three

The bill also authorizes an insurer that provides property or casualty insurance to post on the insurer's Internet site any standard policy and endorsements to the policy that do not contain personally identifiable information. A number of requirements apply if the insurer elects to post such documents, including: 1) the documents must remain accessible on the Internet site for as long as they are in effect; 2) the insurer must make the documents available upon request for at least five years after the policy terminates; 3) the documents must be posted in such a manner that they can be printed and saved by using programs or applications that are widely available and free to use; 4) in or with each declarations page that is provided when the policy is issued and when it is renewed, the insurer must provide a description of the exact policy and endorsements that the insured has purchased, information about how the insured may obtain a paper copy of the policy and any endorsements, and the address of the Internet site where the documents are posted; and 5) if the insurer makes any changes to the policy or an endorsement form, the insurer must provide notice of the change to the policy or endorsement form, that the insured may obtain a paper copy of the policy or endorsement form, and the address of the Internet site where the policy or endorsement form is posted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- ✓
- 1 **SECTION 1.** 610.60 of the statutes is created to read:
 - 2 **610.60 Electronic delivery of notices and documents. (1) DEFINITIONS.**
 - 3 In this section:
 - 4 (a) "Applicable law" means applicable statutory law and rules and regulations
 - 5 having the force of law.
 - 6 (b) "Deliver by electronic means" includes any of the following:

ASSEMBLY BILL 373

1 1. Delivery to an electronic mail address at which a party has consented to
2 receive notices or documents.

3 2. Posting on an electronic network or site that is accessible via the Internet
4 by using a mobile application, computer, mobile device, tablet, or any other electronic
5 device and sending separate notice of the posting to a party, directed to the electronic
6 mail address at which the party has consented to receive notice of the posting.

7 (c) "Party" means a recipient of a notice or document required as part of an
8 insurance transaction, including an applicant, an insured, or a policyholder.

9 (2) ELECTRONIC DELIVERY PERMITTED; EQUIVALENT TO OTHER METHODS. (a) Subject
10 to par. (c), sub² (3), and s. 137.12 (2r) (c), notice to a party, and any other document
11 that is required under applicable law in an insurance transaction or that serves as
12 evidence of insurance coverage, may be stored, presented, and delivered by electronic
13 means, as long as the notice or other document meets the requirements of subch. II
14 of ch. 137.

15 (b) Delivery of a notice or document in accordance with this section shall be
16 considered equivalent to any delivery method required under applicable law,
17 including delivery by 1st class mail; 1st class mail, postage prepaid; certified mail;
18 or registered mail.

19 (c) If a provision of, or rule promulgated under, chs. 600 to 655 that requires
20 a notice or document to be provided to a party expressly requires verification or
21 acknowledgment of receipt of the notice or document, the notice or document may be
22 delivered by electronic means only if the method used provides for verification or
23 acknowledgment of receipt.

and the verification or
acknowledgment of receipt can be documented ✓

Insert 3-14 →

Insert 3-23 ✓ →

ASSEMBLY BILL 373

Unless sub. (5) (b) applies,
SECTION 1

1 (3) CONDITIONS PRECEDENT FOR ELECTRONIC DELIVERY. (a) An insurer may deliver
2 notices and documents to a party by electronic means under this section if all of the
3 following are satisfied:

4 1. The party affirmatively consented to that method of delivery and has not
5 withdrawn the consent.

6 2. Before the party gave consent, the insurer provided the party with a
7 statement of the hardware and software requirements for access to and retention of
8 notices and documents delivered by electronic means.

9 3. The party consented electronically, or confirmed consent electronically, in a
10 manner that reasonably demonstrates that the party is able to access information
11 in the electronic form that the insurer will use for delivery of notices and documents
12 by electronic means.

13 4. Before the party gave consent, the insurer provided the party with a clear
14 and conspicuous statement informing the party of all of the following:

15 a. The right or option of the party to have notices and documents provided or
16 made available in paper or another nonelectronic form instead.

17 b. The right of the party to withdraw consent to have notices and documents
18 delivered by electronic means and any fees, conditions, or consequences that are
19 imposed if consent is withdrawn.

20 c. That the party's consent applies to any notices or documents that may be
21 delivered by electronic means during the course of the relationship between the
22 party and the insurer.

23 d. After consent for delivery by electronic means is given, the means, if any, by
24 which a party may obtain a paper copy of a notice or document that has been
25 delivered by electronic means and the fee, if any, for the paper copy.

Enrolled 4-3

5
1 e. The procedure a party must follow to withdraw consent to have notices and
2 documents delivered by electronic means and to update information needed to
3 contact the party electronically.

4 (b) If the conditions under par. (a) are satisfied, the insurer may elect to deliver
5 all notices and documents by electronic means or only those notices and documents
6 selected by the insurer. or sub. (5)(6) letter

7 (c) Even if the conditions under par. (a) are satisfied, the insurer may deliver
8 any notice or document by 1st class mail; 1st class mail, postage prepaid; certified
9 mail; or registered mail. or sub. (5)(6) letter

10 (4) MISCELLANEOUS RELATED PROVISIONS. (a) This section does not affect any
11 requirement related to the content or timing of a notice or document required under
12 applicable law. Insert 5-9

13 (b) The legal effectiveness, validity, or enforceability of any contract or policy
14 of insurance executed by a party may not be denied solely because of the failure to
15 obtain electronic consent or confirmation of consent of the party in accordance with
16 sub. (3) (a) 3. Insert 5-15

17 (c) 1. A withdrawal of consent by a party becomes effective 30 days after the
18 insurer receives the withdrawal. Insert 5-16

19 2. A withdrawal of consent by a party does not affect the legal effectiveness,
20 validity, or enforceability of a notice or document delivered by electronic means to the
21 party before the withdrawal of consent becomes effective.

22 (d) If an oral communication or a recording of an oral communication between
23 a party and an insurer or an insurer's agent can be reliably stored and reproduced
24 by the insurer, the oral communication or recording may qualify as a notice or
25 document delivered by electronic means for purposes of this section. Insert 5-25

Insert 5-26

ASSEMBLY BILL 373

SECTION 1

(e) If a provision of, or rule promulgated under, chs. 600 to 655 requires a signature or a notice or document to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice, or document.

(f) Except as provided in par. (d), this section does not and may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., as amended.

(5) EFFECT ON EARLIER ELECTRONIC DELIVERY. (a) This section does not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this paragraph [LRB inserts date], to a party who, before that date, consented to receive a notice or document in electronic form otherwise allowed by law. *applicable*

(b) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this paragraph [LRB inserts date], and, in accordance with this section, the insurer intends to deliver notices and documents to the party in electronic form before delivering any additional notices or documents electronically, the insurer shall notify the party of all of the following:

1. The notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically *by electronic means*

2. The party's right to withdraw consent to have any notices or documents delivered by electronic means.

Insert 6-24

ASSEMBLY BILL 373

(6) POSTING OF POLICIES AND ENDORSEMENTS ON INTERNET. Notwithstanding subs. (1) to (5), in lieu of delivery to a policyholder, insured, or applicant for insurance by any other method, an insurer may post on the insurer's Internet site any standard policy, and any endorsements to such a policy, that do not contain personally identifiable information. An insurer that elects to post such a policy and any endorsements to the policy on its Internet site shall comply with all of the following requirements:

(a) The policy and any endorsements must be accessible on the insurer's Internet site for as long as the policy is in effect.

(b) For at least 5 years after the policy terminates, the insurer must archive the policy and any endorsements to the policy and make them available upon request.

(c) The policy and any endorsements must be posted in such a manner that the insured is able to print and save the policy and endorsements by using programs or applications that are widely available on the Internet and free to use.

(d) The insurer must provide all of the following information in, or simultaneously with, each declarations page that is provided when the policy is initially issued and when it is renewed:

1. A description of the exact policy and endorsement forms purchased by the insured.

2. The method by which the insured may obtain, upon request and without charge, a paper copy of the policy and any endorsements to the policy.

3. The address of the Internet site where the policy and any endorsements to the policy are posted.

ASSEMBLY BILL 373

SECTION 1

to the insured ✓

Insert 8-3
1 (e) If the insurer makes any changes to the policy or an endorsement form, the
2 insurer must provide notice, in the format preferred by the insured, of all of the
3 following:

- 4 1. The change to the policy or endorsement form.
5 2. The insured's right to obtain, upon request and without charge, a paper copy
6 of the policy or endorsement form.
7 3. The address of the Internet site where the policy or endorsement form is
8 posted.

9 (7) APPLICABILITY. This section applies only to property and casualty insurance,
10 as described in s. Ins. 6.75 (2), Wis. Adm. Code.

Insert 8-10 ✓
11 7 ← (8) OPTIONAL METHODS. Nothing in this section requires an insurer to deliver
12 a notice or document by electronic means or to post policies and endorsements on an
13 Internet site.

14 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0156/ins
PJK:.....

PI
r m not run

INSERT A

not it was delivered electronically if the consumer consented to electronic delivery
in a manner that reasonably demonstrated that the consumer would be able to
receive the notices and documents electronically NO
(END OF INSERT A) A

INSERT 3-14

****NOTE: I added a reference to sub. (5) (b) in the par. (a) above to clarify that sub.
(3) (a) and (5) (b) are parallel procedures. ✓

(END OF INSERT 3-14)

INSERT 3-23

****NOTE: The requested language was added to the end of par. (c) above. ✓

(END OF INSERT 3-23)

INSERT 4-3

****NOTE: I added "Unless sub. (5) (b) applies," to the beginning of par. (a) (intro.)
above. ✓

(END OF INSERT 4-3)

INSERT 5-9

****NOTE: I added a reference to sub. (5) (b) in pars. (b) and (c) above. ✓

(END OF INSERT 5-9)

INSERT 5-15

- 1 not the contract or policy was delivered by electronic means if the insurer has
2 obtained the NO
A

(END OF INSERT 5-15)

INSERT 5-16



Is the way in which
Ins 5-16

****NOTE: *See how* I modified the requested language in par. (b) above. *Is this okay?* ✓
There isn't anything comparable to obtaining electronic consent under sub. (5) (b). Is this
a problem? Do you want to add "or has complied with sub. (5) (b)" to the end of the
paragraph above? ✓

(END OF INSERT 5-16)

INSERT 5-25

1 *wof* This paragraph does not apply to notices or documents that are required by
2 applicable law to be in writing. ✓

(END OF INSERT 5-25)

INSERT 5-26

****NOTE: The requested language, modified by inserting "applicable" before "law," ✓
was added at the end of par. (d) above. ✓

(END OF INSERT 5-26)

INSERT 6-9

3 *g* (g) If an insurer attempts to deliver a notice or document by electronic means
4 to the most recent electronic ✓ mail address for the insured in the insurer's files and
5 the insurer receives a notice that the delivery by electronic means has failed, the
6 insurer shall deliver the notice or document by 1st class mail ✓ or by any other delivery
7 method required for the notice or document by a provision of, or rule promulgated
8 under, chs. 600 to 655. ✓

(END OF INSERT 6-9)

INSERT 6-10

****NOTE: The requested par. (g) was added above. ✓

(END OF INSERT 6-10)

INSERT 6-24

↓

Ins 6-24

****NOTE: In the subsection above, I replaced various instances of "in electronic form" and "electronically" with "by electronic means" and added "applicable" before "law," since those are the defined phrases. ✓

(END OF INSERT 6-24)

INSERT 7-11

- 1 *not* retain copies of the policy and any endorsements to the policy as provided in any
2 provision of, or rule promulgated under, chs. 600 to 655, ✓ but must make the policy
3 and any endorsements to the policy available upon the request of an insured for at
4 least 3 ✓ years *NO*
4

(END OF INSERT 7-11)

INSERT 7-12

****NOTE: The requested language was added to par. (b) ✓ above.

(END OF INSERT 7-12)

INSERT 8-3

****NOTE: I removed "in the format preferred by the insured," as requested, and replaced it with "to the insured." ✓

*

(END OF INSERT 8-3)

INSERT 8-10

✓
****NOTE: I did not include a provision stating that this section applies to all insurers because it does unless it is specifically limited to certain types, which it was before. *g*

(END OF INSERT 8-10)

Kahler, Pam

From: Reader, Kirsten
Sent: Friday, October 18, 2013 3:10 PM
To: Kahler, Pam
Subject: RE: Substitute amendment to AB 373

Pam:

I've been told we're good and the answer to your question is yes.

Could you make these /ls for the senate and assembly and jacket?

Thanks,

Kirsten Reader

Sent from my U.S. Cellular® Smartphone

----- Original message -----

From: "Kahler, Pam" <Pam.Kahler@legis.wisconsin.gov>
Date: 10/18/2013 1:23 PM (GMT-06:00)
To: "Reader, Kirsten" <Kirsten.Reader@legis.wisconsin.gov>
Subject: Substitute amendment to AB 373

Hi, Kirsten:

I'm going to be out of the office on Monday, so if you need changes it would be great if you could get them to me today. If you get them over to me on Monday or Tuesday, though, I'm sure I can still get the draft out to you on Tuesday. Do you need it 24 hours in advance of the hearing? What time is the hearing?

Pam

Pamela J. Kahler

Legislative Attorney

Legislative Reference Bureau

608-266-2682



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0156/1
PJK:jld:rs

pm is run

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 373

Monday, please

✓ Regen

- 1 AN ACT *to create* 610.60 of the statutes; **relating to:** electronic delivery of
2 notices and documents by insurers.

Analysis by the Legislative Reference Bureau

This substitute amendment authorizes any insurer to provide notices and documents to an insurance applicant, an insured, or a policyholder (consumer) by electronic means, and provides that doing so, in compliance with the requirements under the substitute amendment, is equivalent to any other method of delivering notices and documents required under applicable law.

An insurer may provide notices and documents electronically if the consumer has consented to delivery in that manner and has not withdrawn the consent. The consumer must give consent electronically in a manner that reasonably demonstrates that the consumer will be able to receive the notices and documents electronically. If a consumer gives consent for electronic delivery, the consent applies to any notice or document that the insurer elects to deliver electronically. The consumer may, however, receive a paper copy of a notice or document that has been sent electronically, upon request and for a fee, if any, if the insurer offers this option. Before the consumer gives consent for electronic delivery, the insurer must provide the consumer with a clear and conspicuous statement that contains a number of pieces of information, including that the consent applies to any notices and

documents that may be delivered electronically; that the consumer may receive notices and documents in paper form instead; how to request a paper copy, if the insurer offers that option, of a notice or document that has been delivered electronically; and that the consumer may withdraw the consent and the method for doing so.

The substitute amendment contains various related provisions, such as that an oral communication between a consumer and an insurer may qualify as a notice or document delivered electronically if the communication can be reliably stored and reproduced by the insurer and is not required to be in writing under any statute or rule; that withdrawal of consent is effective 30 days after the insurer receives the withdrawal; that the withdrawal of consent does not affect the legality, validity, or enforceability of a notice or document delivered electronically before the withdrawal becomes effective; that the legality, validity, or enforceability of a notice or document delivered electronically may not be denied solely because it was delivered electronically if the consumer consented to electronic delivery in a manner that reasonably demonstrated that the consumer would be able to receive the notices and documents electronically; and that notices and documents delivered electronically must meet the requirements of the provisions of the statutes that codify the Uniform Electronic Transactions Act.

The substitute amendment also authorizes an insurer to post on the insurer's Internet site any standard policy and endorsements to the policy that do not contain personally identifiable information. A number of requirements apply if the insurer elects to post such documents, including: 1) the documents must remain accessible on the Internet site for as long as they are in effect; 2) the insurer must make the documents available upon request for at least three years after the policy terminates; 3) the documents must be posted in such a manner that they can be printed and saved by using programs or applications that are widely available and free to use; 4) in or with each declarations page that is provided when the policy is issued and when it is renewed, the insurer must provide a description of the exact policy and endorsements that the insured has purchased, information about how the insured may obtain a paper copy of the policy and any endorsements, and the address of the Internet site where the documents are posted; and 5) if the insurer makes any changes to the policy or an endorsement form, the insurer must provide notice of the change to the policy or endorsement form, that the insured may obtain a paper copy of the policy or endorsement form, and the address of the Internet site where the policy or endorsement form is posted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 610.60 of the statutes is created to read:
- 2 **610.60 Electronic delivery of notices and documents. (1) DEFINITIONS.**
- 3 In this section:

1 (a) "Applicable law" means applicable statutory law and rules and regulations
2 having the force of law.

3 (b) "Deliver by electronic means" includes any of the following:

4 1. Delivery to an electronic mail address at which a party has consented to
5 receive notices or documents.

6 2. Posting on an electronic network or site that is accessible via the Internet
7 by using a mobile application, computer, mobile device, tablet, or any other electronic
8 device and sending separate notice of the posting to a party, directed to the electronic
9 mail address at which the party has consented to receive notice of the posting.

10 (c) "Party" means a recipient of a notice or document required as part of an
11 insurance transaction, including an applicant, an insured, or a policyholder.

12 (2) ELECTRONIC DELIVERY PERMITTED; EQUIVALENT TO OTHER METHODS. (a) Subject
13 to par. (c), subs. (3) and (5) (b), and s. 137.12 (2r) (c), notice to a party, and any other
14 document that is required under applicable law in an insurance transaction or that
15 serves as evidence of insurance coverage, may be stored, presented, and delivered by
16 electronic means, as long as the notice or other document meets the requirements of
17 subch. II of ch. 137.

****NOTE: I added a reference to sub. (5) (b) in the par. (a) above to clarify that sub.
(3) (a) and (5) (b) are parallel procedures.

18 (b) Delivery of a notice or document in accordance with this section shall be
19 considered equivalent to any delivery method required under applicable law,
20 including delivery by 1st class mail; 1st class mail, postage prepaid; certified mail;
21 or registered mail.

22 (c) If a provision of, or rule promulgated under, chs. 600 to 655 that requires
23 a notice or document to be provided to a party expressly requires verification or

1 acknowledgment of receipt of the notice or document, the notice or document may be
2 delivered by electronic means only if the method used provides for verification or
3 acknowledgment of receipt and the verification or acknowledgement of receipt can
4 be documented.

****NOTE: The requested language was added to the end of par. (c) above.

5 (3) CONDITIONS PRECEDENT FOR ELECTRONIC DELIVERY. (a) Unless sub. (5) (b)
6 applies, an insurer may deliver notices and documents to a party by electronic means
7 under this section if all of the following are satisfied:

****NOTE: I added "Unless sub. (5) (b) applies," to the beginning of par. (a) (intro.)
above.

8 1. The party affirmatively consented to that method of delivery and has not
9 withdrawn the consent.

10 2. Before the party gave consent, the insurer provided the party with a
11 statement of the hardware and software requirements for access to and retention of
12 notices and documents delivered by electronic means.

13 3. The party consented electronically, or confirmed consent electronically, in a
14 manner that reasonably demonstrates that the party is able to access information
15 in the electronic form that the insurer will use for delivery of notices and documents
16 by electronic means.

17 4. Before the party gave consent, the insurer provided the party with a clear
18 and conspicuous statement informing the party of all of the following:

19 a. The right or option of the party to have notices and documents provided or
20 made available in paper or another nonelectronic form instead.

21 b. The right of the party to withdraw consent to have notices and documents
22 delivered by electronic means and any fees, conditions, or consequences that are
23 imposed if consent is withdrawn.

1 c. That the party's consent applies to any notices or documents that may be
2 delivered by electronic means during the course of the relationship between the
3 party and the insurer.

4 d. After consent for delivery by electronic means is given, the means, if any, by
5 which a party may obtain a paper copy of a notice or document that has been
6 delivered by electronic means and the fee, if any, for the paper copy.

7 e. The procedure a party must follow to withdraw consent to have notices and
8 documents delivered by electronic means and to update information needed to
9 contact the party electronically.

10 (b) If the conditions under par. (a) or sub. (5) (b) are satisfied, the insurer may
11 elect to deliver all notices and documents by electronic means or only those notices
12 and documents selected by the insurer.

13 (c) Even if the conditions under par. (a) or sub. (5) (b) are satisfied, the insurer
14 may deliver any notice or document by 1st class mail; 1st class mail, postage prepaid;
15 certified mail; or registered mail.

****NOTE: I added a reference to sub. (5) (b) in pars. (b) and (c) above.

16 (4) MISCELLANEOUS RELATED PROVISIONS. (a) This section does not affect any
17 requirement related to the content or timing of a notice or document required under
18 applicable law.

19 (b) The legal effectiveness, validity, or enforceability of any contract or policy
20 of insurance executed by a party may not be denied solely because the contract or
21 policy was delivered by electronic means if the insurer has obtained the electronic
22 consent or confirmation of consent of the party in accordance with sub. (3) (a) 3.

****NOTE: Is the way in which I modified the requested language in par. (b) above
okay? There isn't anything comparable to obtaining electronic consent under sub. (5) (b).
Is this a problem? Do you want to add "or has complied with sub. (5) (b)" to the end of the
paragraph above?

or has complied with sub.
(5) (b).

1 (c) 1. A withdrawal of consent by a party becomes effective 30 days after the
2 insurer receives the withdrawal.

3 2. A withdrawal of consent by a party does not affect the legal effectiveness,
4 validity, or enforceability of a notice or document delivered by electronic means to the
5 party before the withdrawal of consent becomes effective.

6 (d) If an oral communication or a recording of an oral communication between
7 a party and an insurer or an insurer's agent can be reliably stored and reproduced
8 by the insurer, the oral communication or recording may qualify as a notice or
9 document delivered by electronic means for purposes of this section. This paragraph
10 does not apply to notices or documents that are required by applicable law to be in
11 writing.

****NOTE: The requested language, modified by inserting "applicable" before "law,"
was added at the end of par. (d) above.

12 (e) If a provision of, or rule promulgated under, chs. 600 to 655 requires a
13 signature or a notice or document to be notarized, acknowledged, verified, or made
14 under oath, the requirement is satisfied if the electronic signature of the person
15 authorized to perform those acts, together with all other information required to be
16 included by the provision, is attached to or logically associated with the signature,
17 notice, or document.

18 (f) Except as provided in par. (d), this section does not and may not be construed
19 to modify, limit, or supersede the provisions of the federal Electronic Signatures in
20 Global and National Commerce Act, 15 USC 7001 et seq., as amended.

21 (g) If an insurer attempts to deliver a notice or document by electronic means
22 to the most recent electronic mail address for the insured in the insurer's files and
23 the insurer receives a notice that the delivery by electronic means has failed, the

insurer shall deliver the notice or document by 1st class mail or by any other delivery method required for the notice or document by a provision of, or rule promulgated under, chs. 600 to 655.

***NOTE: The requested par. (g) was added above.

(5) EFFECT ON EARLIER ELECTRONIC DELIVERY. (a) This section does not apply to a notice or document delivered by an insurer by electronic means before the effective date of this paragraph [LRB inserts date], to a party who, before that date, consented to receive a notice or document by electronic means otherwise allowed by applicable law.

(b) If the consent of a party to receive certain notices or documents by electronic means is on file with an insurer before the effective date of this paragraph [LRB inserts date], and, in accordance with this section, the insurer intends to deliver notices and documents to the party by electronic means, before delivering any additional notices or documents by electronic means, the insurer shall notify the party of all of the following:

1. The notices or documents that may be delivered by electronic means under this section that were not previously delivered by electronic means.

2. The party's right to withdraw consent to have any notices or documents delivered by electronic means.

***NOTE: In the subsection above, I replaced various instances of "in electronic form" and "electronically" with "by electronic means" and added "applicable" before "law," since those are the defined phrases.

(6) POSTING OF POLICIES AND ENDORSEMENTS ON INTERNET. Notwithstanding subs. (1) to (5), in lieu of delivery to a policyholder, insured, or applicant for insurance by any other method, an insurer may post on the insurer's Internet site any standard policy, and any endorsements to such a policy, that do not contain personally

1 identifiable information. An insurer that elects to post such a policy and any
2 endorsements to the policy on its Internet site shall comply with all of the following
3 requirements:

4 (a) The policy and any endorsements must be accessible on the insurer's
5 Internet site for as long as the policy is in effect.

6 (b) After the policy terminates, the insurer must retain copies of the policy and
7 any endorsements to the policy as provided in any provision of, or rule promulgated
8 under, chs. 600 to 655, but must make the policy and any endorsements to the policy
9 available upon the request of an insured for at least 3 years.

****NOTE: The requested language was added to par. (b) above.

10 (c) The policy and any endorsements must be posted in such a manner that the
11 insured is able to print and save the policy and endorsements by using programs or
12 applications that are widely available on the Internet and free to use.

13 (d) The insurer must provide all of the following information in, or
14 simultaneously with, each declarations page that is provided when the policy is
15 initially issued and when it is renewed:

16 1. A description of the exact policy and endorsement forms purchased by the
17 insured.

18 2. The method by which the insured may obtain, upon request and without
19 charge, a paper copy of the policy and any endorsements to the policy.

20 3. The address of the Internet site where the policy and any endorsements to
21 the policy are posted.

22 (e) If the insurer makes any changes to the policy or an endorsement form, the
23 insurer must provide notice to the insured of all of the following:

****NOTE: I removed “, in the format preferred by the insured,” as requested, and replaced it with “to the insured.”

1. The change to the policy or endorsement form.
2. The insured's right to obtain, upon request and without charge, a paper copy of the policy or endorsement form.
3. The address of the Internet site where the policy or endorsement form is posted.

***NOTE: I did not include a provision stating that this section applies to all insurers because it does unless it is specifically limited to certain types, which it was before.

- (7) OPTIONAL METHODS. Nothing in this section requires an insurer to deliver a notice or document by electronic means or to post policies and endorsements on an Internet site.

(END)